

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

COASTAL CONSTRUCTION CO., INC.,

Respondent.

CASE NO. OSH 2009-36

ORDER NO. 374

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on January 21, 2010, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Scott E. Kubota, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 (29 CFR 1926.501(b)(13))

Whether the characterization as "Repeat Serious" and the associated penalty of \$10,000 of Citation 1, Item 1, resulting from Inspection No. 311437206, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.501(b)(13) was violated because:

Two employees working on a roof were not protected from potential serious injuries due to fall hazards by the use of fall protection.

2. Whether an affirmative defense for employee misconduct is supported by the evidence.

3. Whether the Inspector misunderstood Respondent's disciplinary policy.
- B. The deadline for the parties' final naming of witnesses is **February 22, 2010**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **April 19, 2010**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **May 18, 2010 at 8:30 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, January 22, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the

trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Scott E. Kubota, Esq.